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'Tweaks bar FCC from hearing pleas against SC decrees'

Question of jurisdiction surfaces when court takes up varsity teachers' appeals

By Nasir Iqbal

ISLAMABAD: The Federal Constitutional Court's (FCC) jurisdiction to hear intra-court appeals (ICAs) came under question on Monday when a senior counsel objected to the court taking up appeals that had earlier been filed under the Supreme Court (Practice and Procedure) Act, 2023.

"If the FCC hears and decides ICAs that were moved against decisions of the Supreme Court, it will create the impression that the court is sitting as an appellate forum over Supreme Court judgements, whereas the 27th Constitutional Amendment contains no such provision," argued senior counsel Ibad-ur-Rehman Lodhi.

Consequently, Chief Justice Aminuddin Khan, who was heading a six-member FCC bench, adjourned the proceedings to allow the counsel to file an appropriate petition on the matter. The counsel later told *Dawn* that he would file a miscellaneous application within the present ICA instead of submitting a separate petition.

The issue arose when the FCC bench, also comprising Justices Syed Hasan Azhar Rizvi, Ali Baqar Najafi, Muhammad Karim Khan Agha, Rozi Khan Barrech and Arshad Hussain Shah, took up a set of ICAs concerning the All Public Universities BPS Teachers Association (APUBTA), an organisation that had earlier highlighted vacant positions across public-sector universities, including vice-chancellors, presidents, vice presidents, registrars, faculty heads, department heads, controllers of examination, and directors of finance.

When the case was taken up, Advocate Lodhi representing one of the petitioners, vice chancellor Dr Akhtar Ali Kalhoro of the NFC Institute of Engineering, Multan, argued that the FCC could not hear the matter because the appeal had been filed under Section 5 of the SC (Practice and Procedure) Act, 2023.

He contended that the matter should instead be referred back to the SC, which had issued adverse remarks against the petitioner. However, the CJ reminded him that the SC could no longer hear petitions filed under Article 184(3), which relates to the enforcement of fundamental rights, now omitted under the 27th Constitutional Amendment. "Where is Article 184(3) in the Constitution as it stands today?" Justice K.K. Agha asked.

The counsel responded that at the time the appeal was filed before the SC, Article 184(3) was still in effect, even though Article 175(E) now vests original jurisdiction in the FCC to hear such matters. He noted that no appeal or petition under Article 175(E) was pending before the SC that would require transferring cases to the FCC; rather, the appeals had been filed under Article 185 of the Constitution. Justice Najafi observed that the amendment had broadened the scope and concept of the Article, bringing such matters within the FCC's domain.

"Confusion inevitably arises when matters are left to assumption," the counsel argued, adding that lawmakers did not address this anomaly. He reiterated that the SC was not seized of any petition under Article 175(E) that would warrant transferring cases to the FCC after its creation.

"Why don't you file a separate petition on this point?" Justice Najafi suggested.

The counsel replied that if the FCC proceeded with the appeal, it would give the impression that the court was acting as an appellate body over SC decisions. He added that Article 175(F) of the 27th Amendment clearly states that the FCC may hear and determine appeals arising from judgements of a high court made under Article 199 — and not those of the SC.

During the hearing, the FCC also appeared constrained by the lack of readily available copies of the Pakistan Legal Decisions or the Supreme Court Monthly Review for quick reference to prior decisions. The bench had to rely on books provided by the counsel, with two judges sharing a single copy at a time.

Israel sacks several generals over Oct 7 attack

• Gaza truce progress slow as Israel kills three more Palestinians in latest assault

JERUSALEM: Israel's military announced the dismissal of three generals and disciplinary actions against several other senior officers over their failure to prevent the October 2023 assault by Hamas, the deadliest attack in the country's history.

The move comes two weeks after Israeli military chief Eyal Zamir called for a "systemic investigation" into the failures that led to onslaught, even as the government dragged its feet on establishing a state commission of inquiry despite public pressure.

The list of generals fired included three divisional commanders, one of whom was then serving as the military intelligence chief.

A military statement released on Sunday said they bore personal responsibility for the armed forces' failure to prevent the attack.

The firing comes after all three had already resigned from their posts, including the former head of the southern command General Yaron Finkelman.

Disciplinary actions were also announced against the heads of the navy and air force along with moves against four other generals and several senior officers.

It remains to be seen how or if Israeli Prime Minister Benjamin Netanyahu might also be pinned with blame for having a role in the inability to prevent the Hamas onslaught. For the past two years, Netanyahu has repeatedly said that the failures that lead to the October 7 attacks should be addressed after the war in Gaza ended.

According to polls, a large number of Israelis across the political spectrum support the establishment of an inquiry to determine who is responsible for the authorities' failure to prevent the attack.

Netanyahu's government has so far refused to form such a commission.

Missile attack

Meanwhile, Israeli forces killed three Palestinians in Gaza near the line demarcating areas of Israeli control on Monday, underlining the struggle to broaden a fragile ceasefire deal approved over six weeks ago to global acclaim.

Palestinian medics said incidents involved an Israeli drone firing a missile at a group of people east of Khan Younis, killing two and wounding another, and a tank shell killing a person on the eastern side of Gaza City.

Israel's military said it had fired after identifying fighters crossing the so-called yellow line and approaching its troops, posing an immediate threat to them.

Hamas and Israel signed a truce on October 9 halting two years of devastating warfare but the agreement left the most intractable disputes for further talks, freezing the conflict without resolving it.

POLICE remove a Jewish protester for taking part in a Palestinian Action demonstration outside Britain's Home Office in London.—AFP

Both sides have since accused each other of deadly breaches of existing commitments in the agreement and of pushing back against later steps required by US 20-point peace plan for Gaza.

Former British prime minister Tony Blair, who helped the US develop the plan and who Trump has said may join the board of peace, met the PA's deputy leader Hussein al-Sheikh in the West Bank on Sunday.

Sheikh said in a social media post they had discussed developments following the Security Council resolution and requirements for Palestinian self-determination.

Meanwhile, a Hamas delegation in Cairo, led by its exiled chief Khalil al-Hayya, held talks with Egyptian officials on exploring the next phase of the ceasefire, according to Hazem Qassem, a Hamas spokesperson in Gaza

Separately, the Gaza health ministry said on Monday that at least 342 Palestinians had been killed by Israeli fire since the start of the truce. —Agencies

UN laments 'meagre' results at COP30 summit

GENEVA: The UN rights chief lamented on Monday the "meagre results" at the COP30 climate summit, warning that the "fatal inaction" of leaders might one day be considered a crime against humanity.

Nations sealed a modest agreement at the UN climate summit in the Brazilian Amazon on Saturday as many countries swallowed weaker terms on a fossil fuel phaseout to preserve unity.

The agreement calls on countries to voluntarily "accelerate" their climate action, but only with an implicit nod to phasing out fossil fuels.

In an address to the UN's business and human rights forum in Geneva, UN rights chief Volker Turk warned that the "meagre results of COP30 in Belem" illustrated how "corporate power imbalances ... play out in the climate emergency".

"The fossil fuel industry is generating massive profits while devastating some of the poorest communities and countries in the world," he said. "There needs to be proper accountability for this injustice, and for all other harms related to climate chaos."

Turk highlighted a recent ruling by the International Court of Justice determining that "governments need to prevent significant harm to our climate, including by regulating businesses". And the Inter-American Court of Human Rights had also recognised the right to a stable climate and called on countries to "enforce corporate due diligence and provide remedies for climate related harm", he said.

The UN High Commissioner for Human Rights told Monday's gathering that he often wondered "how future generations will judge our leaders' actions — and their fatal inaction — on the climate crisis in 50, 100 years from now".

"Could the inadequate response of today be considered ecocide or even a crime against humanity?"—AFP

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